

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.R.P. (NPD) NO.3496 OF 2011

1. Ramraj
2. Ramkumar
3. Ramprasad

...Petitioners

Vs.

1. Saravanakumar
2. Subramaniya Chettiar
3. Dhanasekaran
4. Prakash

...Respondents

Prayer:

Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the Fair and Decreetal order in I.A.No.433 of 2010 in CMA No.15 of 2005 dated 22.03.2011 on the file of the Principal District Judge, Villupuram.

For Petitioners : Mr. N.Suresh

For Respondents : Mr. R. Rajarajan

for Mr. R. Balakrishnan for R1 to R4.

ORDER

The Appellants in CMA No.15 of 2005 and petitioners in I.A.No. 433 of 2010 in CMA No.15 of 2005, are the Revision Petitioners herein.

2. Originally, I.A.No.433 of 2010 has been preferred by the appellants / petitioners to restore the appeal in CMA No.15 of 2005, which was dismissed for default on 10.09.2009.

3. The case of the Petitioners in I.A.No.433 of 2010 is that, on 10.09.2009, when CMA No. 15 of 2005 was listed, they have not appeared before the Court and as such, the counsel, who was on record for the petitioners, has also could not attend the court owing to some personal reasons and hence, the appeal was dismissed for default. According to the petitioners, they were not negligent in attending the court and the reason for the absence was beyond the control of the petitioners.

4. Per contra, the counsel appearing for the first respondent in I.A.No.433 of 2010, would contend that earlier the deceased Venkatarathinam Ammal, the petitioner, filed the suit for specific performance of the agreement dated 02.04.1991 in the year 1998 and the said suit was dismissed for default on 07.06.2001 and she had filed an application for restoration of the same and the same was allowed in I.A.No.710 of 2002. Again the said application was dismissed for default on 05.12.2002 and the application filed for restoration of the same was also allowed and then the suit was

posted for list on 20.03.2003 for trial. However, since the deceased petitioner, Venkatarathinam Ammal, did not appear on 20.03.2003, the same was again dismissed for default. Only in the said circumstances, she filed the Civil Miscellaneous Appeal in the year 2005 in CMA No. 15 of 2005. However, she died on 30.05.2007. Being the legal heirs, after the death of Venkatarathinam Ammal, the petitioners took lot of time to implead themselves as the legal heirs of the deceased petitioner. The matter was dragged on till 30.08.2007 and ultimately, they were impleaded in the year 2009. Even after impleaded as the parties to the proceedings, the petitioners were not diligent, as a result of which, the appeal was dismissed for default on 10.09.2009. Even though it was mentioned in the affidavit filed by the first petitioner in support of the petition that he was having illness on that date of hearing i.e, on 10.09.2009, in order to support the same, no document was produced on the side of the first petitioner.

5. The learned District Judge, Villupuram, after finding out the intention of the petitioner, dismissed the application filed by the petitioners in I.A.No.433 of 2010, which is for restoration of the appeal.

6. Upon considering the arguments advanced by either side, it is not in dispute that the deceased Venkatarathinam Ammal filed a suit for the relief of Specific Performance in the year 1998. The said suit was dismissed for default on 07.06.2001 and again 05.12.2002. After knowing the fact the said suit was restored to file repeatedly for two times and dismissed for default and when it was restored for the third time, the petitioner, deceased Venkatarathinam Ammal, did not care to appear before the court below and the same was dismissed for default on 20.03.2003. Only in the said circumstances CMA was instituted in the year 2005. In the said circumstances, 12 years have been passed by, without any progress. Even after knowing the entire facts, the petitioners have failed to prosecute the suit after 2007. In fact, the petitioners were not diligent in proceeding with the appeal though the suit was instituted in the year 1998.

7. In the impugned order passed by the court below, the learned Principal District Judge, Villupuram, has categorically mentioned the dates on which the suit was again and again dismissed and came to the conclusion that only due to the lapses made on the part of the petitioners, the suit was not proceeded till date and dismissed the appeal.

8. In this regard, on going through the affidavit filed by the petitioners, nothing has been averred specifically, despite the earlier dismissal order passed by the trial court. Though the original petitioner Venkatarathinam Ammal had died, being the legal heirs, it is easy for the petitioners to implead themselves as the parties to the proceedings immediately after the death of their mother. Further, they have not stated any specific reason for the non appearance before the trial court. In the said circumstances, if the CMA is again restored on file, the respondents will be put into much hardship and irreparable loss. Accordingly, I am of the considered view that the impugned order passed by the court below does not have any material irregularity. Therefore, I am of the opinion that the ground raised by the petitioners for setting aside the order dated 10.09.2009, is not substantiated with document and accordingly, the Civil Revision Petition is dismissed. No costs.

सत्यमेव जयते

18.11.2019

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1. The Principal District Judge, Villupuram.
2. The Section Officer, V.R.Section, High Court, Madras.

R. PONGIAPPAN, J.

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